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VIA ELECTRONIC SUBMISSION

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW – Lobby Level
Washington, DC 20554

Re: **Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, WT Docket No. 17-79**

Dear Ms. Dortch:

The Federal Communications Commission has acted in this docket to remove needless federal impediments to broadband deployment by eliminating tribal, historic, and environmental reviews for small cell facilities. Once effective, these actions will reduce deployment timelines and allow carriers to accelerate broadband deployment, thus expanding access to broadband for more Americans. But, removing unnecessary federal impediments to broadband deployment is only part of what's needed. Particularly in states that have not passed small cell legislation, municipalities continue to impede the placement of small cell facilities in the rights of way (ROW) by charging excessive fees, refusing placement outright, and imposing other unreasonable barriers. The Commission should act to address these problems. AT&T encourages the Commission to clarify the limits on a municipality's authority to restrict wireless providers' access to the ROW and ROW infrastructure.

The Commission is authorized under Sections 253 and 332(c)(7) of the Communications Act to promote broadband services, and the Commission is well within its authority to interpret those statutes. These two sections contain almost identical language barring state and local actions that "prohibit or have the effect of prohibiting" service. The Commission should affirm that the Sections 253 and 332 "effective prohibition" standard is met whenever state or local action materially inhibits or limits the ability of any competitor or potential competitor to provide telecommunications services. For small cells, the Commission should make clear that, absent unusual circumstances (such as collocation in a historic district), refusal of a municipality to accept a standard form deployment as set forth in the Commission's Second Report and Order would constitute a "prohibition of service." Under these standards the Commission and providers can establish a solid framework to accelerate the expansion of broadband. Moreover, the municipal safe harbors in Sections 253(b) and (c) protect against concerns about overreach.

The Commission should likewise find that unreasonable fees imposed for access to the ROW effectively prohibit carriers from providing service. When municipalities charge

prohibitively high fees to place new poles in the ROW or access existing ROW infrastructure, they discourage broadband providers from deploying. Even when providers agree to unreasonable municipal demands, the excessive ROW fees have the effect of prohibiting the construction of or reducing the number of nodes providers can afford to build, thereby significantly reducing the provision of broadband service and preventing deployment in downstream communities. All providers have limited capital dollars to invest, funds that are quickly depleted when drained by excessive ROW fees. Bringing ROW fees in line with the costs incurred by the municipality to process applications and manage the ROW would make those fees fair and reasonable, allowing AT&T and other providers to stretch finite capital dollars to additional communities. Even fees that only slightly exceed a municipality's costs harm deployment due to the sheer number of expected small cell deployments over the next few years. While the Commission recently noted the harm of excessive non-recurring fees for tribal reviews, *annually* recurring fees are even more harmful because of their continuing and compounding nature.

In its comments, AT&T proposed that the Commission adopt presumptively reasonable safe harbor fees that municipalities can charge for access to the ROW and ROW infrastructure, including a $50 recurring annual fee per small cell node. The Commission should also adopt a safe harbor for nonrecurring fees, such as $500 for up to five nodes, plus $50 per additional node submitted. These fees are in the range of those fees approved in state small cell bills and substantially more than fees paid to utilities under the Commission's pole attachment rate formula for the placement of equipment on comparable structures. The establishment of safe harbor fees set by category (i.e., recurring vs. nonrecurring) will help to avoid controversies that could arise if some municipalities attempted to circumvent safe harbors by changing the name of their fees or adopting new fees.

The Commission should also adopt a 60-day shot clock under Section 332 for small cells collocated on existing poles, which is consistent with Section 6409, and 90 days for small cells placed on new poles. Clear and consistent shot clock deadlines would simplify deployment processes for municipalities and carriers alike, eliminate confusion, and prevent unnecessary delay in small cell deployments. It should also include any mandated pre-application review periods. Pre-application review meetings provide valuable insight to municipalities and providers, but some municipalities use these meetings to mandate the submission of voluminous documentation and to impose expensive changes in the proposal in order to delay action, all outside the shot clock. A shot clock that begins upon the earlier of a notice of a pre-application review meeting or the filing of the permit application would close this gap. And, if a municipality fails to act within the applicable Section 332 shot clock, providers should be able to invoke a deemed granted remedy to facilitate timely deployment. Even if a provider decides not to begin construction in a manner allowed when an application is deemed granted, the existence of the remedy is nevertheless important. In AT&T's experience, the mere threat of the deemed granted remedy encourages municipalities to take action within the shot clock period or to work out a reasonable extension and amicable resolution with the carrier.

Pursuant to Section 1.1206 of the Commission's rules, an electronic copy of this letter is being filed for inclusion in this docket.

Sincerely,

Henry G. Hultquist

CC: Commissioner Brendan Carr
Will Adams